STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SAM PERKINS and AARIAN PERKINS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SAM JONES,

Respondent-Appellant,

and

DELVA PERKINS and DAVE JACKSON,

Respondents.

UNPUBLISHED
February 23, 1999

No. 211290
Genesee Juvenile Court
LC No. 96-106254 NA

Before: Gribbs, P.J., and Saad and P.H. Chamberlain*, JJ.

PER CURIAM.

Respondent-appellant Sam Jones (hereinafter "respondent") appeals as of right from the juvenile court order terminating his parental rights to the minor child, Sam Perkins, under MCL 712A.19b(3)(a)(ii) and (c)(i); MSA 27.3178(598.19b)(3)(a)(ii) and (c)(i).[1] We affirm.

Respondent first argues that he was not provided with proper notice of the initiation of child protective proceedings pursuant to MCR 5.921(B). Because respondent did not challenge or raise the issue of lack of service or notice arising out of the prior proceedings in the juvenile court, this issue may be considered waived. *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992). However, because this issue is also raised in conjunction with a claim of ineffective assistance of counsel, we will address it to the extent permitted by the available record.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Under MCR 5.921(B), the trial court was not required to provide respondent with notice of the original petition because respondent was not a party to these proceedings at that time, and no charges for neglect or abuse were then pending against him. Further, respondent was not the child's legal "father" or "parent" at that time as those terms are defined in MCR 5.903(A)(4) and (12). *In re Gillespie, supra* at 445-446. Rather, the trial court had discretion at any time during the pendency of the proceedings to determine if respondent was the child's putative father and, at that point, to provide notice of the proceedings. MCR 5.921(D)(1). Here, however, because respondent only ordered the transcript of the termination hearing, it cannot be determined from the available record how the trial court viewed respondent's role in this case at the earlier proceedings. Respondent's failure to produce all of the relevant transcripts waives further review of this issue. *People v Robert Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995). Nonetheless, on the basis of the limited record provided to this Court, it appears that the trial court complied with MCR 5.921(D), in providing respondent notice of these proceedings.

Respondent also contends that he should have been advised of the right to appointed counsel at the initiation of these proceedings. As discussed above, however, respondent was neither a party to the initial proceedings, nor entitled to notice as the child's parent or father. The court rules do not provide for the appointment of counsel for putative fathers who are not named as parties. The court was not required to advise respondent of his right to counsel until he was formally named a party and appeared in court. MCR 5.915(B)(1). Because respondent has failed to provide the transcripts of the earlier hearings, further review of this issue is waived. *Anderson, supra* at 535.

Next, respondent argues that, under MCR 5.921(D)(1)(c), he was entitled to express, on the record notice that his parental rights could be terminated in these proceedings. However, the notice prescribed by MCR 5.921(D)(1) is written notice, not oral, on the record notice as respondent asserts. Moreover, the notice prescribed by MCR 5.921(D)(1) must be given only after a person is identified as a child's putative father, following a hearing. Because respondent has not provided the transcripts of the earlier proceedings, we are unable to determine at what point the trial court identified respondent as the child's putative father, thereby entitling respondent to the notice prescribed in MCR 5.921(D)(1). In any event, when respondent was personally served in court with the summons and petition to terminate his parental rights, the summons included language warning him that the hearing could result in the temporary or permanent loss of his parental rights to his child. Similarly, in April 1997, notice of the first petition requesting termination of parental rights was served by publication, because respondent's whereabouts were unknown, and that notice also included the requisite warning that respondent's parental rights could be terminated.

Respondent also argues that his due process rights under the federal and state constitutions, US Const, XIV; Const 1963, art 1, § 17, were violated because he was not provided with notice of the initiation of these proceedings. However, we consider this issue abandoned because respondent makes no attempt to explain how his constitutional rights were violated apart from the requirements of the court rules. *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998).

Finally, respondent argues that trial counsel was ineffective. Because respondent did not raise this issue in an appropriate motion in the trial court, appellate review is limited to errors apparent on the record.[2] *People v Wilson*, 196 Mich App 604, 612; 493 NW2d 471 (1992); *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). This Court has applied the test for ineffective assistance of counsel in criminal matters to termination proceedings. *In re Rogers*, 160 Mich App 500, 502; 409 NW2d 486 (1987). In order for this Court to reverse on the basis of ineffective assistance of counsel, respondent must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced respondent that he was denied the right to a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Limiting our review to the record, respondent has not shown any basis for relief due to ineffective assistance of counsel.

Affirmed.

/s/ Roman S. Gribbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain

[1] Delva Perkins, the mother of the named minor children, and Dave Jackson, the father of Aarian, have not appealed the juvenile court's decision.

[2] Respondent argues that he should be excused from the preservation requirement because of trial counsel's ineffectiveness in failing to raise this issue in a motion for a new trial. We disagree. Respondent, who is represented by separate appellate counsel, could have still pursued an ineffective assistance of counsel claim by filing a timely motion to remand with this Court, MCR 7.211(C)(1), but never did so.